IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1040 OF 1988

1. Lahu Balkrishna Kadam)
Age 19 years, residing at)
Uttalsar Naka, Bakarwadi,)
Ramji Bhayya’s Chawl,)
Naupada, thane, now)
residing at Railway Porter)
Chawl, Kopri, Thane.)

2. Anil Namdeo Mhatre,)
age 18 years, residing at)
Thane Civil Hospital Servant)
Chawl, Room No.7, Thane.)

3. Shekhar Digambar Thombre)
age 18 years, residing at)
Thane civil Hospital Servant)
Chawl, Room No.8, Thane.)

4. Raja Maruti Pawar)
Age 20 years, residing at)
Thane Civil Hospital Servant)
Chawl, Room No.3, Thane.)

5. Rajesh Mohanlal Solanki)
age 19 years, residing at)
Shakti Mill, Bhimabai Sawant)
Chawl, Naupada, Thane.)

6. Vikas Mallikarjun Gaikwad)

All lodged at present Thane)
Central Prison, Thane.)...Appellants
(Orig. Accused
Nos.1,2,3,5,6 & 7)

Versus

1. The State of Maharashtra)...Respondents

Mr. P.P.Hudlikar with V.V.Purwant for appellants

Ms. P.H.Kantharaia, APP for State

WITH

CRIMINAL APPEALNO.1042 OF 1988

Sunil Balkrishna Bhoir,)
age about 20 years, residing at)
Thane Civil Hospital Servant's)
Chawl, Room No.8, Thane at)
present Thane Central Prison.)...Appellant
(Org.Accused No.4)

Versus

The State of Maharashtra)...Respondent

Mr. P.P.Hudlikar with Mr.V.V.Purwant for appellant
Ms. P.H.Kantharia, APP for State.

CORAM : R.M.S.KHANDEPARKER &
P.V.KAKADE, JJ.

DATE : 1ST FEBRUARY, 2005.

ORAL JUDGMENT : (Per Kakade, J.)

1. Both the appeals are being disposed of by this common judgment as they arise out of judgment and order passed by the learned Additional Sessions Judge, Thane dated 17th November, 1988 in Sessions Case No.456 of 1987 wherein in all seven accused persons were involved and convicted and sentenced accordingly. Out of which Criminal Appeal No.1040 of 1988 is filed by original Accused Nos.1, 2, 3, 5, 6 and 7 whereas Accused No.4 has filed separate Appeal being Cri. Appeal No.1042 of 1988. The Trial Court framed the charges against all the accused persons for commission of the offence punishable under Sections 147, 148, 302 read with 149 of the Indian Penal Code and in the alternative they were charged for offence punishable under Section 302 read with 34 of the Indian Penal Code. Accused No.2 was further charged under Section 302 of the Indian Penal Code whereas Accused No.3 was further charged for the offence punishable under Section 323 of the Indian Penal Code. All the accused persons were again charged for the offence punishable

under Section 452 of the Indian Penal Code. However, all the accused persons were convicted for the offences punishable under Sections 147, 148, 452 of the Indian Penal Code and each of them were sentenced to R.I. for two years and to pay fine of Rs.500/= each, in default payment of fine they were directed to undergo further imprisonment for three months. Similarly all the accused persons were convicted for the offence punishable under Section 302 read with 149 of I.P.C. and each one was sentenced for imprisonment for life and to pay fine of Rs.500/=, in default to undergo R.I. for three months. Accused No.3 was further convicted for the commission of offence punishable under Section 323 of the Indian Penal Code and was sentenced to pay fine of Rs.500/=, in default to undergo S.I. for three months. It was further directed that all the substantive sentences would run concurrently.

2. The prosecution case in brief is thus -

3. The incident occurred on 3.2.1987 at about 9.00 p.m. in the house of the deceased. About fortnight prior to the incident there was a quarrel between Accused No.1 and his friends on one hand and deceased on the other.

Thereafter till 2.2.1987 everything was fine. On that day when deceased Ramdas and his friend complainant - Kishor were standing in front of deceased person's house, all the accused persons came there. It was about 7.30 in the night. Accused No.1 asked for gold pendent to the deceased Ramdas, which was the subject matter of earlier quarrel. Thereupon the deceased told him that he had returned it to the persons from Panchpakhadi area and will point out that persons if he wanted to do so. Thereupon accused no.2 caught hold of the collar of shirt of the deceased Ramdas and a scuffle took place in between accused no.2 and the deceased. Complainant Kishor intervened the quarrel along with wife of accused no.1 and they were separated. At that time, it is alleged that the hand of deceased touched to the person of wife of accused no.1 for which purpose a complaint was made by accused no.1 to outpost Kopri Police. The complainant Kishor and deceased also went to Police Station and reported the matter to the police. However, the police pacified both the parties and sent them back.

4. On 3.2.1987 at about 7.30 p.m. witness Kishor met the deceased Ramdas and then they went away to pan stall. Thereafter they took a round in the Bazar and at

about 9.00 p.m. both of them went to the house of the deceased Ramdas. Ramdas then asked the complainant Kishor to wait till he took his dinner and thereafter they would go to the complainant's house. The complainant Kishor thereafter sat on the cot in the front room of the deceased and deceased Ramdas was taking his dinner in the inside room. Baburao father of the deceased also finished his meals and he was rinsing his hand to the towel, at that time the complainant Kishor saw 6 to 7 persons had come to the front of the house of the deceased. The complainant went to see who were those persons and when he came in front of the door he saw all the accused persons. At that time accused no.2 was holding open knife in his hand, accused nos.3 and 6 were holding swords in their hands, accused no.2 asked complainant to call out the deceased Ramdas. The complainant told them that deceased was taking dinner and they could talk after he had finished his dinner. Thereupon accused no.3 assaulted complainant by means of sword from its blunt side on left shoulder of the complainant and all the accused suddenly entered in the house of deceased Ramdas. Baburao father of the deceased tried to obstruct them at which time he caught hold of the sword from the hands of accused no.6. Due to which Baburao sustained bleeding injuries on his

both the hands. He was also given kick blows and all the accused entered into the room, where the deceased Ramdas was taking dinner. All the accused gave kicks and fist blows to the deceased Ramdas whereas accused No.2 Anil Mhatre stabbed the deceased Ramdas by means of knife. While all the accused were coming out of the house, witness Bhaskar, the brother of the deceased arrived there. Accused No.2 pointed a knife to witness Bhaskar and threatened him not to enter into the house and after that accused persons ran away. Complainant Kishor saw that deceased Ramdas was lying injured and was shouting that he was assaulted. Complainant then started to go to police Outpost Kopri. On the way he met with Sudhakar, another brother of deceased. The complainant Kishor informed to Sudhakar that the deceased Ramdas had sustained injuries and he should be brought to the Police outpost Kopri. Then he went to Police outpost Kopri. By that time Sudhakar brother of the deceased brought the deceased Ramdas to outpost Kopri Police. The outpost Kopri Police then referred the deceased Ramdas, complainant Kishor and witness Baburao to the Civil Hospital, Thane where the Doctor examined the deceased Ramdas and declared him as dead. At that time Doctor examined the complainant Kishor and witness Baburao and

also gave medical treatment them.

. The complainant narrated the incident to P.S.I. Sutkar, who recorded the complaint of the complainant Kishor at 9.45 p.m. at the Civil Hospital, Thane. The complaint was forwarded to the Police Station where the offence came to be registered at 10.15 p.m. on the complaint of Kishor, who was also eye witness.

5. The inquest panchnama was made and dead body was sent for post mortem. The Medical Officer completed the post mortem and whose report was received in due course, which is part of the record. Investigating Officer made panchnama of the scene of incident and seized certain articles from the spot. Statement of various witnesses were recorded by the Investigating Officer.

. On the very day of the incident accused Nos.1, 2 and 3 were arrested and their cloths were seized under panchnama. On 5.2.1987 accused nos.2 and 3 were interrogated in the presence of panchas and recovery of Gupti Article No.14 and Sword Article No.15 were made at the instance of the said accused under Section 27 of the Indian Evidence Act. On 6.2.1987 accused no.4 was

arrested under panchnama Exh.40. On 15.2.1987 Special Judicial Magistrate - Shri Kulkarni was requested to hold identification parade of accused Nos.1 to 4. Accordingly, on 16.2.1987 identification parade was held with regard to the accused Nos.1 to 4.

. On the very day i.e. on 16.2.1987 accused no.5 was arrested and accused No.6 came to be arrested on 18.3.1987 under panchnama. Whereas accused No.7 was arrested on 19.3.1987. On 19.3.1987 accused No.6 was interrogated in the presence of panchas and in the course of interrogation he volunteered to lead the police to the spot where he had kept the weapon of offence and accordingly sword article no.16 was seized at the instance of accused no.6 under Section 27 of the Indian Evidence Act.

6. All the articles which were attached in the course of investigation were sent to Chemical Analyst for examination, whose report was received in due course, which is part of the record. On 24.3.1987 Special Judicial Magistrate - Kulkarni again held identification parade with regard to accused nos. 5, 6 and 7 and his report was received, which is part of the record.

7. On completion of the investigation the charge-sheet was sent to the Court of Judicial Magistrate, First Class, Thane, who intern committed the case to the Court of Sessions.

8. The learned Sessions Judge, Thane framed the charges against the accused for the impugned offence, to which they pleaded not guilty. The defence of the accused persons was that of total denial of any criminal liability. The prosecution led its evidence at length, which consists of eye witness account along with medical evidence on record as well as panch witnesses in respect of seizure of the weapons of offence at the instance of the accused persons and panchnamas of arrest as well as spot panchnama. On the basis of available evidence on record the trial judge came to the conclusion that the prosecution had established that the accused persons were guilty of unlawful assembly in commission of the offences contemplated under Section 452 as well as 302 of Indian Penal Code and accused no.3 also was convicted for offence punishable under Section 323 of the Indian Penal Code and all the accused were sentenced for offence in aforesaid manner. Hence the present appeals.

9. We heard the learned counsel for the appellants in both the appeals as well as the learned A.P.P. for the State. With assistance from both the sides we have critically perused the entire evidence on record.

10. It is apparent that the case of the prosecution is founded on testimony of four eye witnesses besides, other circumstantial evidence including the medical evidence on record and therefore, it would be just and proper on our part to appreciate the ocular testimony involved in this case initially.

. The testimony of complainant Kishor, who is friend of deceased Ramdas for several years, shows that there were earlier altercations between the parties which ultimately resulted in the incident on the fateful day. Complainant has also stated that all the accused persons, giving their names in details, were seen together outside the house of the deceased person and accused no.2 asked him to call out the deceased Ramdas. Complainant informed him that Ramdas was taking his meals and they should wait till he finished his dinner at which time accused no.3 assaulted the complainant by means of sword on its blunt

side on his shoulder. Then all the accused persons suddenly entered into the house of the deceased Ramdas. All the accused entered into the room where the deceased Ramdas was and accused No.3 and accused No.6 were holding swords in their hands. When accused No.6 Rajesh Solanki was about to assault the deceased, father of the deceased Ramdas caught hold of the sword of accused no.6, as a result of which Baburao sustained injuries on his hands. Then all the accused persons dragged the father of the deceased upto the door and gave kicks and fist blows. Then all the accused entered into the room where the deceased Ramdas was taking his meals. Firstly, the deceased Ramdas was given kicks and fist blows. Accused no.2 Anil Mhatre, who was holding open knife like a Gupti in his hand and he then assaulted the deceased by means of that weapon. Then all the accused persons ran away. When all the accused persons were running out, they met with the elder brother of deceased Ramdas outside the house. Accused no.2 pointed a knife to Bhaskar and asked him not to enter into the house. Witness Ratna Sudhakar Kajale, sister-in-law of the deceased, who was serving meals to the deceased at the relevant time and on seeing the accused, was standing in the middle door of the house. After the accused went away the deceased was shouting that

he was assaulted. The complainant told him that he would go to the police station. While he was going to the police station the complainant met Sudhakar, brother of deceased Ramdas and he was informed about the incident and was asked to bring the deceased to police station and complainant went to inform about the incident to the Police. Sudhakar brought the deceased Ramdas and his father Baburao by autorickshaw. The police then referred the deceased, father of the deceased and complainant to Civil Hospital, Thane. However, the medical officer declared Ramdas dead on his arrival. Thereafter the complainant filed his complaint, which was recorded at the Civil Hospital, Thane vide Exh.30.

11. This version of complainant Kishor is fully corroborated by FIR filed by him, which was recorded within about 45 minuets from the incident i.e. at 10.45 p.m. at Civil Hospital, Thane whereas the incident took place at about 9.00 p.m. in the house of the deceased. It is also pertinent to note that the complainant has named all the seven accused persons, as he knew them since earlier time and the version of the assault given in the FIR totally corroborates his testimony before the Court in all material respects. In our considered view, the

evidence of complainant Kishor is found to be totally trustworthy, firstly because it is corroborated by the FIR filed by him vide Exh.30, which was within 45 minuets of the incident and secondly, due to the reason that the complainant has no animosity against any of the accused persons to involve them falsely nor he had any occasion to contemplate to involve the accused falsely in the present case. Be as it may, the fact remains that the testimony of Kishor duly corroborated by his FIR is further corroborated by the ocular testimony of other witnesses.

12. P.W.2 Ratna, sister-in-law of the deceased, evidently was serving meals to the deceased Ramdas, when he was attacked by the accused persons. Her version also further corroborates about the incident in all respects to the version given by the complainant. She has further stated that she has identified accused Nos.1,3, 4 and 5 in the course of identification parade as well as before the court to be the assailants of deceased Ramdas. Her presence and fact that she witnessed the incident cannot be doubted for a moment because it is established beyond doubt that witness Baburao and his all sons including deceased Ramdas, Bhaskar, Sudhakar and Sunil were living together and Ratna is wife of Sudhakar, who was serving

meals to deceased Ramdas at the relevant time, therefore, we are also inclined to accept the testimony of witness Ratna as true.

. The prosecution has examined P.W. 3 Sunil, brother of deceased Ramdas, also has witnessed the incident and has also named the accused persons. According to him, accused no.2 was holding Gupti like knife in his hand whereas accused Nos.3 and 6 were holding swords in their hands. He also testified that he had his bicycle shop across the road. While he was at bicycle shop, about 3-4 auto rickshaws came in front of the shop. About 6-7 persons alighted from the said autorickshaws. Out of them four persons were known to him. They went towards his house. He also went to the house and saw the accused persons were taking to complainant Kishor but they did not listen to him and accused No.3 gave a blow to the complainant Kishor by means of sword from its blunt side. Thereafter they entered the house. They were resisted by his father Baburao but when his father caught hold of the sword of accused no.6, Baburao was injured in his hand and he was given kick and fist blows. Then those persons entered the room where the deceased Ramdas was taking his meals where accused no.2 assaulted deceased Ramdas on

stomach by means of Gupti. The other persons assaulted the deceased with their hands and while those persons were going out, accused no.2 pointed a knife to his elder brother who was coming from outside and gave threats to him and went away. Deceased Ramdas was lying below near the cot, who was subsequently taken to police outpost Kopri and then hospital where he was declared dead.

. This version is again corroborated by witness Bhaskar, brother of the deceased, who was not present at the time of assault in the house, but came on the scene immediately after the incident. He has stated that when he came to the house he saw persons coming out of his house and one person pointed a Gupti to his stomach and threatened him not to enter the house. Thereafter those persons left the house. When he entered the house he saw his father Baburao had also sustained injuries on both of his hands and complainant Kishor also sustained injury on his shoulder and deceased Ramdas was lying below near the cot in injured condition.

13. This entire evidence is again fortified by testimony of P.W.5 - Baburao, who has totally corroborated version put forth by other witnesses. Baburao, father of

the deceased, has stated that he was in his home, when the complaint was sitting on the on the cot in the the deceased was taking his meals served by witness Ratna in the inside room, at which time one of the persons having a Gupti like knife and two other persons having swords along with others entered the house without paying any heed to the complainant Kishor. When the complainant asked them to stop, one of the person, who was short in height and swarthy in complexion gave a blow by means of sword by its blunt side on complainant's left shoulder. Those persons tried to enter the house but he tried to stop them. At that time he caught hold of sword by both the hands, of a person who was of middle height and wheatish in complexion, that person snatched the sword with force from his hands, as a result of which he sustained injuries on fingers of both hands. Then all those persons gave kick and fist blows to him. Then all those persons went towards the place, where the deceased Ramdas was taking his meals and they all assaulted him with fist and kick blows. One of the person, who was little tall in height, swarthy in complexion, stabbed the deceased on his stomach by means of Gupti like knife and thereafter ran out of the house. By that time his son and his wife came to the house. The persons holding weapon like Gupti asked him

not to go ahead.

14. Therefore, if we take into account the basic texture of the entire ocular testimonies putforth by these witnesses there appears no doubt whatsoever about the involvement of all the accused persons. It is also to be noted that evidence of complainant is clear enough to establish the identity of all the assailants because he knew the persons since prior to the incident. Moreover, in support of the positive identification by complainant of the assailants, the evidence of identification parade has categorically established the identification of accused Nos.1, 2, 3 and 5 as well as accused No. 6 at the relevant time. No doubt that the evidence of identification parade, by its very nature, is a weak piece of evidence, however, in this case the positive identification made by the complainant Kishor, which is reflected again in his FIR filed within 45 minutes of the incident, gets support and corroboration from identification parade and therefore, to that extent we accept the evidence of identification parade as corroborative piece of evidence to the ocular testimony given by the said witnesses.

15. The medical evidence is brought on record through the testimony of P.W. 9 - Dr. Jejurikar, who has examined the complainant Kishor as well as witness Baburao. Complainant Kishor was examined at about 9.35 p.m. in casualty ward of the hospital and was found to have received following injury :

> Clean wound on left infra clavicular region middle third of the clavic 1/4 cm x 1/4 cm x 1/4 cm.

Similarly Baburao was examined at 9.40 pm. and was found to have received following injuries -

> Clean incised wound on the right hand at the distal former kreez 1/2 cm. 1/2 cm x 1/4 cm. and on first web space 1/2 cm. x 1/2 cm. x 1/2 cm. Injury on first web space is also a clean incised wound and it is injury no.2.
>
> Clean incised wound on left thumb terminal fale x 1/2 cm. x 1/2 cm. x 1/2 cm.

If we take into account the testimonies of the Complainant

Kishor as well as Baburao as well as other witnesses it is clear enough that the complainant had suffered injury on his left shoulder, whereas Baburao had suffered clean incised wounds on his right hand as well as left thumb, which are indicative of the fact that he tried to grab sword from the hands of accused no.6, but it was snatched, as a result of which such injuries occurred.

16. Dr. Jejurikar's evidence is also brought on record to show that he has performed post-mortem examination on the body of deceased Ramdas. The following were injuries found on the body of Ramdas -

1. Stab wound on epigastric region right to midline 1" x 1/2" x deep to peritoneal cavity direct cavity direct into backward and upward.

2. Incised wound over left index finger at metacorpus fallengial joint 1/2" x 1/4" x 1/8"

3. Incised wound on left thumb metacorpus fallengial joint 1/2" x 1/4" x 1/8"

According to medical officer, probable cause of death was

due to hypovolumia due to stab injury i.e. injury No.1, which was sufficient in the natural course to cause death.

. The Medical evidence therefore clearly corroborates the testimonies of the eye witnesses regarding the occurrence of injuries not only on the persons of deceased but also on the persons of complainant as well as witness Baburao in the course of the incident.

17. The circumstantial evidence on record further shows that the weapons of offence were seized at the instance of the accused nos.2, 3 and 6 when they volunteered to lead the police to the place where the weapons were kept or hidden. The evidence of panch witness P.W. 6 along with the testimony of Investigating Officer corroborated by memorandum Exh.43 and recovery panchnama Exh.43A shows that Article No.14 Gupti was recovered at the instance of Accused no.2. Similarly Exhibit-44 Memorandum and Exh.44A recovery panchnama shows that Article-15 sword was recovered at the instance of accused no.2 are also duly testified by the panch witness No.6 which are duly corroborated by the evidence of Investigating Officer. So also the evidence of panch witness P.W.7 Lokhande shows that recovery of sword was

made at the instance of accused No.6 for which Memorandum was made at Exh.46 and recovery panchnama was made at Exh.46-A. We have carefully perused the evidence of witnesses as well as recovery panchnama and memorandum vis-a-vis testimony of Investigating Officer recorded under Sec.27 of the Evidence Act are duly complied with and the seizure is legal and valid under the said provisions of law. Therefore this corroborative piece of circumstantial evidence is again indicative of the involvement of the accused persons.

18. This entire evidence is again supported by other circumstantial evidence as such Chemical Analysis Report Exhs.68, 70, 72 and 73 as well as various panchnamas drawn by the police at various times with regard to the seizure of incriminating articles as well as relevant articles such as sample of blood taken from the scene of incident. As we have noted that the evidence of identification parade, however weak, definitely corroborates the prosecution story regarding involvement of the identified accused persons.

19. In this regard we must note that in the course of perusal of the evidence we did come across minor

discrepancies and contradictions in the testimonies of the witnesses, however, those were definitely not of such nature to render the very fabric of the prosecution evidence doubtful.

20. Mr. Hudlikar, the learned counsel for the appellants sought to raise various objections with regard to the prosecution evidence on record. It was urged that if we perused the evidence of the complainant, it was obvious that he was not in a position to witness the actual incident when he was sitting on the cot in the front room. However, it must be noted that the entire house consists of two room of normal size and by no stretch of imagination it can be said that the complainant would not be in position to witness the assault from his place. Similarly, evidence of Ratna is also sought to be attacked on this very ground. However, it is quite evident that she was serving meals to deceased Ramdas at the time when he was attacked and assaulted and therefore, it cannot be said that she was not in a position to witness the incident at all. So far as evidence of Baburao and complainant Kishor are concerned, they were evidently injured persons. Baburao tried to catch hold of sword from the hands of the accused no.6, as a result of

which he sustained incised wounds on his fingers. Under the circumstances their presence cannot be doubted even for a moment. No doubt the complainant is a friend of deceased whereas other eye witnesses are family members. However, fact that witness is a close relative and consequently is a partisan witness cannot be a ground to reject his testimony. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. No doubt while approaching such evidence the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible. In the present case there is absolutely no doubt whatsoever that relative witnesses were present at the time and their presence was quite natural considering surrounding circumstances.

21. Mr. Hudlikar, the learned counsel for the appellants further submitted that medical evidence shows that there was only one fatal injury on the person of the deceased, moreover, according to him, evidence is not sufficient to reflect common object for commission of murder on the part of the accused persons and therefore, their conviction with the aid of Section 149 of the Indian

Penal Code cannot sustain. This was urged on the basis of evidence that only accused no.2 stabbed the deceased and other persons only gives fist blows and kicks to the deceased and therefore, common object to commit murder is not evident. We have given our anxious consideration to this proposition. However, we prefer to disagree with the submission made on behalf of the appellants. It cannot be overlooked that not only accused no.2 but accused nos.3 and 6 were also armed with swords. Other accused persons may not be armed with lethal weapons like numbers 2, 3 and 6, however, the evidence sufficiently shows that they came to the house of the accused with predetermination and executed the assault in premeditated manner despite the fact that complainant as well as witness Baburao tried to stop the accused persons from assaulting the deceased. In this regard the Apex Court in the case of **Bhargavan and Ors. vs. State of Kerala reported in 2004 Cri. L.J. 646** has observed as -

> "It cannot be laid down as general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of unlawful assembly, it cannot be said that he is a member of an assembly. The only thing

> required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of S.141. The word "object" means the purpose or design and, in order to make it 'common', it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it an concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it."

Therefore, in the present case before us, we have seen that though only three persons were armed with lethal weapons, the common object which can be attributed is apparent from the evidence which culminated in murder of the deceased and therefore, there is no doubt whatsoever that common object of all the accused persons was commit the murder of deceased for which earlier quarrel was the motive, which is sufficiently brought on record. We may

note here that the purpose for which the members of the assembly set out or desired to achieve is the 'object'. If the object desired by all the members is the same, the knowledge that is the object which is being pursued is shared by all the members and they are in general agreement as to how it is to be achieved and that is now the common object of the assembly. An object is entertained in the human mind, and it being merely a mental attitude, no direct evidence can be available and like intention, as generally to be gathered from the act which the person commits and the result therefrom. Though no hard and fast rule can be laid down under the circumstances from which the common object can be culled out, it may reasonably be collected from the nature of the assembly, arms it carries and behaviour at or before or after the scene of incident.

. In view of this aspect we have no doubt whatsoever that the accused persons at the relevant time and place formed unlawful assembly and formed common object to kill the deceased, as a result of earlier quarrel and hence executed the act of murder with common object. Therefore, under the circumstances it cannot be said that all the accused persons did not entertained the

common object to kill the deceased Ramdas. The evidence on record on the other hand is sufficient to establish beyond reasonable doubt that the common object and the unlawful assembly of the accused persons was to kill Ramdas and they have executed it in brutal manner.

. The evidence on record also is sufficient to show that the ingredients of Section 452 of Indian Penal Code are duly proved by the prosecution evidence and therefore, the trial court has rightly recorded conviction under that count. Similarly the evidence also establishes that the conviction of accused no.3 independently under Section 323 of Indian Penal Code is also sustainable in view of the fact that he made assault on the witness while committing the murder of deceased Ramdas. Therefore, we have no doubt whatsoever that all the accused persons are guilty of commission of offence punishable under Section 302 r/w 149 of Indian Penal Code as well as under Sections 147, 148 and 452 and accused no.3 is guilty of offence punishable under Section 323 of the Indian Penal Code. The reasoning adopted and the findings recorded by the learned Trail Court appear to be just, legal and proper based on appropriate evidence on record and therefore, it would brook no interference by this Court.

22. In the result, both the appeals are hereby dismissed. The judgment and order dated 17th November, 1988 passed by the Additional Sessions Judge, Thane in Sessions Case No.456 of 1987 is hereby confirmed. The Appellants/Accused Nos.1 and 3 in Criminal Appeal No.1040 of 1988 are reported dead. Remaining Accused are on bail and shall surrender to undergo the sentence as per the law before the Sessions Judge, thane within four weeks from today. Their bail bonds stand cancelled.

(R.M.S.Khandeparkar,J.)

(P.V.Kakade, J.)

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